

EXHIBIT C

1

1 Timothy Kennedy, 110 East
2 42nd Street, New York, New York 10017,
3 being first duly sworn/affirmed, was
4 examined and testified as follows: ,

5 BY MS. GREENE:

6 Q. Good morning, Mr. Kennedy. My name
7 is Cara Greene. I'm an attorney and I
8 represent the plaintiff, Hyla Gold, in
9 this matter.

10 Before we begin, I want to
11 give you a few instructions. I know you
12 have seen a deposition at least before,
13 but just so that we all remember what the
14 ground rules are, first of all, do you
15 understand that you are under oath?

16 A. Yes.

17 Q. And do you understand that this is
18 the same oath that you would take in a
19 courtroom?

20 A. Yes.

21 Q. If you don't hear or understand a
22 question I ask you, please feel free to
23 ask me to repeat it or rephrase the
24 question. I will do so. That means if I
25 do ask a question and you answer, you

1 Q. Any other departments other than
2 those five that you have just listed?

3 A. No.

4 Q. And each one of those departments
5 has a department head?

6 A. Correct.

7 Q. Who is the department head of sales
8 for the New York market?

9 A. Lou Giordano.

10 Q. Do each of the markets that we have
11 been discussing those forty-eight markets
12 within the United States, do they each
13 have these different departments within
14 their markets?

15 A. I'm not sure. I know there is
16 based on various market needs structure is
17 different based on the market. For
18 example, how you need to set up an operate
19 New York is quite different than operating
20 Wichita. So, for example, their real
21 estate and public affairs may be just one
22 person versus broken out. Each market has
23 its own ability to create their management
24 structure based on what they need to do so
25 to operate within their market. I don't

1 know each and every market how they are.
2 I know in the big world that's how it's
3 set up from market number 1 down to mark
4 forty-eight or whatever.

5 Q. Okay. Looking at these, not as
6 discrete departments, but as functions
7 within a market, does each market have an
8 operations function or component of the
9 market?

10 MR. PUMA: Objection to the
11 form.

12 THE WITNESS: Yes.

13 BY MS. GREENE:

14 Q. Does each market have a real estate
15 component to the market?

16 A. Yes.

17 Q. Does each market have a publicly
18 affairs component to the market?

19 A. Yes.

20 Q. Does each market have a finance
21 components to that market?

22 A. Yes.

23 Q. And does each market have a sales
24 component within the market?

25 A. Yes.

1 action would be and whether there
2 would be a class or collective action,
3 not the merits of any particular
4 exemption. That has been clear from
5 the start in this case and, to me,
6 this is a perfect example of sending a
7 notice on certain topics and then
8 trying to get information the witness
9 is not prepared for.

10 As to the duties of these
11 various employees, the witness is
12 prepared to testify about that now.
13 He is prepared to testify how they are
14 compensated and the other topics. The
15 goals and objectives of the company
16 overall as to how it uses different
17 lines of business have nothing to do
18 with these areas. It seems to me that
19 we should move on and continue more
20 productive approach to this and work
21 toward the settlement discussions
22 which this has no relation to.

23 THE COURT: This is -- I
24 see the structure of the analysis of
25 this particular issue. I think

1 discovery on this first phase is due
2 to end April 11 which is this week.
3 In any event, I'm looking at a letter
4 from plaintiff's counsel describing
5 what the parties agreed the scope of
6 this discovery would be and the letter
7 is dated January 18 and it describes
8 on page 2 that the discovery would be
9 limited to topics that are "Reasonably
10 necessary for the settlement
11 conference." As a result, I can't
12 really enforce deposition discovery in
13 the way that I would normally if we
14 were talking about discovery on the
15 merits. If they were discovery on the
16 merits, there could be no instruction
17 not to answer unless it were on the
18 ground of privilege. But, the parties
19 had agreed to have some limited
20 discovery to see if it would help them
21 settle this case at a preliminary
22 phase and, as a result, really,
23 they're master's of their own destiny
24 here.
25 If the defendant refused to

1 answer these questions that are given
2 in a deposition to assist settlement
3 discussions, then they may be tying
4 their hands with respect to
5 plaintiff's willingness to settle.
6 They deprive plaintiff of what the
7 plaintiff considers important
8 information for those settlement
9 conversations to succeed.

10 On the other hand, or as
11 well, defendant should bear in mind
12 that to the extent that they refuse to
13 give information at this initial
14 phase, I am going to allow plaintiff
15 to explore these areas with a properly
16 noticed deposition when we get into
17 full fledged merit discovery and there
18 won't be an instruction not to answer
19 that I will uphold other than on the
20 grounds of privilege at that time.

21 So, I'm not going to order the witness
22 to answer.

23 The parties have created
24 sort of an odd animal here in terms of
25 the kinds of discovery that is going

1 forward, so I can't apply the
2 customary rules and it hampers the
3 plaintiff in the settlement
4 discussion, then the defendant will
5 not be able to settle this case early
6 and will just move into full fledged
7 discovery. That's the upshot and
8 that's what we will address since we
9 have a June conference if I remember
10 correctly in terms of the date.

11 So, I'm not going to order
12 the witness to answer. I hope counsel
13 continue to cooperate with each other
14 and you lay the basis for fruitful
15 settlement discussion.

16 MR. PUMA: Thank you, your
17 Honor.

18 MS. GREENE: Thank you,
19 your Honor.

20 (Luncheon recess taken.)

21 (Afternoon session
22 resumed.)

23 BY MS. GREENE:

24 Q. In terms of the other Clear Channel
25 offices in other markets, do you know if

1 they use these same employee handbook that
2 you use?

3 A. I do not know.

4 Q. Who would know?

5 A. I guess the people who distribute
6 the books.

7 Q. Who distributes the books?

8 A. I don't know. I guess the HR
9 department of Clear Channel.

10 Q. By that, do you mean HR department
11 of Clear Channel Communications?

12 A. Yes. I believe they are the ones
13 that assemble it and ship it out.

14 Q. Okay. Do you participate in
15 meetings with the presidents/general
16 managers of other markets?

17 A. No regular meetings, no.

18 Q. Have you ever participated in
19 meetings with other presidents of other
20 markets?

21 A. Yes.

22 Q. When was that?

23 A. The last one was September of '05,
24 maybe, or '06.

25 Q. What was the purpose of that

113

1 towards the end. Do you see that?

2 A. Yes.

3 Q. Is that the website that you were
4 referring to?

5 A. Yes.

6 Q. And, so, on this website are job
7 descriptions for account executives?

8 A. I believe there are sample job
9 descriptions. I myself have not pulled
10 them off. I don't know if it's exactly
11 what it is, but they are supportive
12 information for various job descriptions.

13 Q. Okay. What are the job
14 responsibilities for an account executive?

15 MR. PUMA: Object to the
16 form.

17 THE WITNESS: They vary, you
18 know, to a large degree depending on,
19 you know, what particular account
20 executive position needs to be filled,
21 you know. For example, in the
22 New York market, an account executive
23 for someone that's going to be working
24 out of our Hudson Valley office will
25 vary greatly from an account executive

115

1 it's to, you know, work your client
2 base, prospect for new clients and
3 grow your business. I mean how that
4 breaks down to each individual AE,
5 could be, you know, percentage of time
6 very different depending on who the AE
7 is and depending on, you know, where
8 their prospecting business and where
9 they are servicing business.

10 BY MS. GREENE:

11 Q. Okay. Account executives in the
12 New York City or, I'm sorry, in the
13 New York market you indicated either
14 report to Lou Giordano or Frank?

15 A. Gerald Frankel.

16 Q. Is that correct?

17 A. That's correct.

18 Q. Do you know account executives
19 outside of the New York market, do you
20 know to whom they report within their
21 market?

22 A. No.

23 Q. Do you know if other markets also
24 have a V.P. of sales?

25 A. Yes.

116

1 Q. And, yes, you know?

2 A. Yes, I know.

3 Q. What is the answer, do other

4 markets also have V.P. of sales?

5 A. Yes.

6 Q. Does every market have a V.P. of

7 sales?

8 A. I don't believe so, no.

9 Q. Do you know which markets don't

10 have a V.P. of sales?

11 A. No.

12 Q. Do you know if the majority of

13 market have a V.P. of sales?

14 A. The majority of market do have a

15 V.P. of sales.

16 Q. Do account executive supervise

17 other employees?

18 A. No.

19 Q. Do they hire other employees?

20 MR. PUMA: Objection to the

21 form.

22 THE WITNESS: They don't

23 directly hire. They might be involved

24 with support staff to some degree, but

25 they are not hiring or firing directly

1 themselves.

2 BY MS. GREENE:

3 Q. What types of activities does an
4 account executive engage in in order to do
5 the, what you describe, as their job work
6 the client base, prospects, new clients
7 and grow the business?

8 A. Again, depending on the client base
9 you work with and the prospecting you are
10 doing, it could vary greatly depending on
11 time. Activities include, you know,
12 knowledge of all the inventory.

13 MR. PUMA: He is going to
14 finish his answer. Don't cut him off
15 please.

16 THE WITNESS: Knowledge of
17 all the inventory, knowledge of the
18 media business, knowledge of the
19 competition, knowledge of resources
20 available to support selling efforts,
21 whether its prospecting, servicing
22 your business, time management, you
23 know, Communication skills to be able
24 to interact with various parties of
25 people and then, you know, then

145

1 is working in the Hudson Valley who is
2 probably doing a lot more on the street
3 running, booking one little sign at a
4 time. So, they might have more volume of
5 new clients booked in terms of dollars.
6 It's probably significantly less than
7 others. So, again, it's just -- it varies
8 completely, you know, from one AE to
9 another, certainly, from month-to-month,
10 year-to-year. Someone who might have had
11 a large chunk of previous booked business,
12 that client now moved his buying to
13 Chicago and they lost that segment of
14 their business, so that prebooked business
15 that was layering in year after year may
16 now be gone and now that person is doing a
17 lot more churning and burning and having
18 to sell more deals in a shorter time to
19 make up that money. So, there is no set
20 way to say, you know, these groups of AE
21 predominantly have a lot of book business
22 and they just sit there and do that. It's
23 virtually, you know, changing upstream/
24 downstream all the time.

25 Q. You mentioned that you have to run